IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 3 OF 2007

The Commissioner of Customs ..Appellant.

V/s.

Shri Mansukhbhai Kanjibhai Soni ..Respondent.

Mrs.S.V.Bharucha with N.D. Sharma i/b. H.P.Chaturvedi for appellant.

Mr.S.N.Kantawala with V.Kothari i/b. M/s.Apex Law Partners for respondent.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 28TH FEBRUARY, 2007.

P.C. :-

Heard learned counsel for the appellant and the respondent. In the above appeal, the appellant is seeking to raise the following question of law:-

> " Whether the Joint Secretary to the Government of India was right in rejecting the Revision Application filed by the appellant for absolute confiscation or else increase in redemption fine and personal penalty ? "

2. The Revisional Authority i.e. the Joint Secretary to the Government of India passed an order dated 19th June, 2006 wherein the Joint Secretary has clearly observed as under:-

" This case concerns the seizure of foreign currency equivalent to Rs.16,92,852/- from the appellant at CSI Airport, Mumbai while departing from India which at the stage of original adjudication was confiscated but allowed redemption on fine of Rs.4.25 lakhs and a penalty of Rs.75,000/- was also imposed. An Appeal was filed by the Department to the Commissioner (Appeals) against the order and the appellant simultaneously filed an Appeal praying for reduction in Redemption Fine and Personal Penalty. The Commissioner (Appeals) after discussing the merits of both Appeals found the Order of Original Authority to be just and proper and accordingly upheld the same and rejected the Appeal of both the Appellants. This Revision Application has been filed by the Commissioner against the order of Commissioner (Appeals) praying for absolute confiscation and in case the same is not done, an increase in Redemption Fine and Personal Penalty on various grounds. The Govt. has considered the submissions made. It is seen that absolute confiscation has not been resorted to by both the lower authorities as the foreign currency was supposedly brought to India on earlier visits and as such did not attract prohibition apart from the fact of non-declaration as import of foreign currency uptill any limit is now permissible under the liberalized policy of Government on import of the same.

Govt. has gone through the facts and circumstances of the case and sees no reason to interfere with the order of both the lower authorities in not resorting absolute confiscation as the import of foreign currency and its subsequent export has been liberalized in recent years and the lapse is technical in nature. Redemption Fine and Personal Penalty under the given circumstances also seems to be proper and just.

No interference is therefore needed in respect of both the orders and the Revision Application filed is accordingly rejected as being devoid of merits. "

3. From the above of the Joint Secretary, it is clear that absolute confiscation has not been resorted by both the lower authorities as the foreign currency

was supposedly brought to India even on earlier visits and as such did not attract prohibition apart from the fact of non-declaration as import of foreign currency upto any limit is now permissible under the liberalised policy of the Government on import of the same. Under these circumstances, we do not find any substantial question of law arises in this appeal. Hence appeal is dismissed.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)